IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

S.A. No. 528/2006

Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	**Court's or Judge's Orders.**

CORAM : **A.P. Lavande,J**
DATE : 20th November, 2006

Heard Shri Deshpande, learned counsel for the appellant and Shri A.S. Kilor, learned counsel for the respondent.

2. By this appeal, the appellant takes exception to the Judgment and decree dated 20th August, 2005 passed by the Additional District Judge, Achalpur in Regular Civil Appeal No. 32/1998 dismissing the appeal filed by the appellant/ defendant against the Judgment and decree dated 29th December, 1997 passed by the 3rd Joint Civil Judge, Junior Division, Achalpur in Regular Civil Suit no. 211/95 filed by the respondent/plaintiff.

3. The respondent/plaintiff filed the above referred suit seeking injunction against the defendant, his agent, servants, etc. and any other person acting on his behalf in respect of the property- field survey no. 32/3 of mouja Jambhala. The title and possession of the plaintiff was contested by the defendant. The trial court held that the

plaintiff was the owner and in possession of the suit property. The lower appellate court concurred with the findings of the trial court.

4. Mr. Deshpande, the learned counsel appearing for the appellant submitted that the plaintiff had proved neither the title nor possession in respect of the suit property and, therefore, the decree passed by both the courts below are unsustainable. According to the learned counsel the suit property was part of the property bearing field survey no. 32/3 and, therefore, in the absence of any identification and in view of the non-compliance of the Order 7 Rule 3 of the Code of Civil Procedure both the courts erred in decreeing the suit for injunction filed by the plaintiff. Mr. Kilor, the learned counsel for the respondent submitted that the findings arrived at by both the courts below are based upon proper appreciation of the evidence and, therefore, no interference is called for in this appeal.

5. Having considered the submissions made by the learned counsel and having perused the Judgments passed by both the courts below, I find no merit in this appeal. In so far as the title to the suit property is concerned, both the courts below have given concurrent finding that the plaintiff has proved his title in respect of the property. Even if the argument of Mr. Deshpande that the suit property has not been described in terms of Order 7 Rule

3 of the Code of Civil Procedure is accepted the same does not advance the case of the plaintiff since the trial court has given categorical finding in the Judgment that the defendant in his examination-in-chief has admitted that the plaintiff is in possession of the field survey no. 32/3 since 1993. That being the position, the plaintiff is entitled to injunction against the defendant inasmuch as the defendant has not proved better title in respect of the property bearing survey no. 32/3. The apex Court in **M. Kallappa Setty vs. M. V. Lakshminarayana Rao (AIR 1972 Supreme Court, 2299)** has held that the plaintiff in possession of the suit property on the strength of his possession can resist interference from the defendant who has no better title than himself and can get injunction restraining the defendant from disturbing his possession. In view of the ratio laid down by the apex Court no interference is called for in the decree passed by both the courts below. Non-compliance of the Order 7 Rule 3 of the Code of Civil Procedure having regard to the fact that the plaintiff admits the possession of the entire property bearing survey no. 32/3 is not fatal to the case set up by the plaintiff. Thus, there are concurrent findings of facts recorded by both the courts below. No substantial question of law is involved in the appeal. Therefore, the appeal is summarily rejected.

Judge

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